

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel

Subject: Finding Required for Holding Special Meeting on Less than 10 days' Notice – Government Code Section 11125.4(c)

Date: November 26, 2007

Proposed Commission Action and Staff Recommendation: Make a finding, under Government Code Section 11125.4(c), that holding this meeting on less than the usual 10 days' notice is necessary, as described below.

Reason and Authority for Meeting on Less than 10-Days' Public Notice: This meeting has been convened by giving less than the usual 10-days' notice to the public. This is permissible under Government Code Section 11125.4 when a state body needs to consider, among other things, pending litigation and compliance with the usual 10-day notice requirement in the Bagley-Keene Open Meeting Act (see Gov. Code Sec. 11125) "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest" (Gov. Code Sec. 11125.4(a)). When a body acts under this provision, it must give at least 48-hours' advance notice of its meeting (see Gov. Code Sec. 11125(b)) and make the finding of substantial hardship or protecting the public interest in open session.

On November 14, 2007, the United States Court of Appeals for the Ninth Circuit issued a decision in the *California ProLife Council, Inc. v. Karen Getman, et al.* case (also known as *California ProLife Council, Inc. v. Randolph, et al.*). As a result of the decision, the Commission, which is the primary defendant in the case, must determine the steps necessary to preserve its rights and interests in the litigation. Procedural deadlines in the litigation make it necessary for the Commission to make these decisions immediately. If, at this point, the Commission is required to give 10-days' notice before meeting to determine these issues, it may waive its right to take certain actions in the litigation. Thus, it is necessary for the Commission to hold a special meeting for this purpose and, under Government Code Section 11125.4, provide less than the usual 10-days' notice prior to holding the meeting.

Recommended Finding: Based on the foregoing, staff proposes the Commission make the following finding:

1. The United States Court of Appeals for the Ninth Circuit issued a decision in the *California ProLife Council, Inc. v. Karen Getman, et al.* (also known as *California ProLife Council, Inc. v. Randolph, et al.*) on November 14, 2007.

2. The Commission is the primary defendant in this case and is facing procedural deadlines in the case that, if missed, will preclude the Commission from considering the pursuit of all options available to it in the litigation.

3. Compliance with the usual 10-day public notice under Government Code Section 11125 prior to meeting will cause the Commission to miss these deadlines, thereby imposing a substantial hardship on the Commission and jeopardizing the public interest by depriving the Commission of the ability to take immediate action.

Voting on the Finding: Government Code Section 11125(c) requires a two-thirds vote (four votes) to make the finding if all Commissioners are present and a unanimous vote if less than all Commissioners are present.